

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELYSE PARMENTIER,

Plaintiff,

-against-

CITY OF NY, POLICE OFFICER. AMANDA  
KENNEDY, DUANE READE, INC., KEN  
CASTILLO AND POLICE OFFICER JOHN DOE  
AND RICHARD ROE (NAMES AND NUMBERS  
OF WHOM ARE UNKNOWN AT PRESENT)  
AND OTHER UNIDENTIFIED MEMBERS OF  
THE NEW YORK CITY POLICE  
DEPARTMENT,

Defendants.

-----X

**ANSWER ON BEHALF OF  
DEFENDANTS CITY OF  
NEW YORK AND KENNEDY  
TO CO-DEFENDANTS  
DUANE READE AND  
CASTILLO'S CROSS CLAIM  
WITH CROSS CLAIMS  
AGAINST DUANE READE  
AND CASTILLO**

**08 CV 4039 (CM)**

**JURY TRIAL DEMANDED**

Defendants City of New York and Amanda Kennedy<sup>1</sup> ("the City Defendants"), by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to Cross-Claims of Co-defendants Duane Reade, Inc. and Ken Castillo, asserted in their Answer, respectfully allege, upon information and belief, as follows.

1. Defendants City of New York and Kennedy repeat and reallege each and every paragraph of their answer to the complaint, dated August 1, 2008, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Deny the allegations set forth in Co-defendants Duane Reade and Castillo's cross claim against the City Defendants.

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<sup>1</sup> Sued herein as "P.O. Amanda Kennedy."

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

3. Co-defendants Duane Reade and Castillo's cross-claim fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

4. The City defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have the City Defendants violated any act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

5. At all times relevant to the acts alleged in the complaint and/or cross-claim, the City Defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, the City of New York has governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

6. Defendant Kennedy has not violated any clearly established constitutional or statutory right of which a reasonable person should have known and therefore is protected by qualified immunity.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

7. At all times relevant to the acts alleged in the complaint, defendant Kennedy acted reasonably in the proper and lawful exercise of his discretion.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

8. Co-Defendants Duane Reade and Castillo's cross claim against the City defendants is not ripe for adjudication.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

9. Any injury alleged to have been sustained resulted from plaintiff's and/or cross-claimants' own culpable or negligent conduct or the conduct of third parties not under the control of the City Defendants and was not the proximate result of any act of the City defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

10. Co-defendants Duane Reade and Castillo have failed to comply with New York General Municipal Law § 50-e.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANTS  
DUANE READE AND CASTILLO**

11. Pursuant to Federal Rule of Civil Procedure 13(g) and New York State law, City Defendants, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their cross-claim against co-defendants Duane Reade and Castillo hereby allege as follows:

a. If plaintiff was caused to sustain damages at the times and places and in the manner as alleged in the complaint, and said damages were sustained by reason of the carelessness, recklessness, intentional acts, omissions, negligence and/or breaches of duty of persons other than of the plaintiff, and it is found that the City Defendants are liable to the plaintiff herein under federal or state law, then said damages arose in whole or in part out of the carelessness, recklessness, intentional acts, omissions, negligence and/or breaches of duty, in fact or implied in law, under federal or State law, upon the part of co-defendants Duane Reade and Castillo, and the City Defendant are entitled to indemnification, contribution, and/or proportionate liability, as determined by the Court and/or jury under the law of the State of New York and the United States.

b. City Defendants are entitled to indemnification, contribution, and/or proportionate liability, as determined by the Court and jury under the law of the State of New York and the United States.

**WHEREFORE**, the City Defendants request judgment dismissing the cross-claim of co-defendants Duane Reade and Castillo, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 1, 2008

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City of New York  
Attorney for Defendants City of New York,  
& PO Amanda Kennedy  
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By:

  
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To:

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELYSE PARMENTIER,

Plaintiff,

-against-

CITY OF NY, P.O. AMANDA KENNEDY,  
DUANE READE, INC., KEN CASTILLO,

Defendants.

**ANSWER BY DEFENDANTS CITY OF NEW  
YORK & KENNEDY TO CO-DEFENDANTS  
DUANE READE AND CASTILLO'S CROSS  
CLAIM**

*Corporation Counsel of the City of New York  
Attorney for the City of New York & Kennedy  
100 Church Street, Room 3-148  
New York, N.Y. 10007*

*Of Counsel: Joyce Campbell Priv  terre*

*Tel: (212) 788-1277  
NYCLIS No.*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for.....*